IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 44 of 2001

in

SPECIAL CIVIL APPLICATIONNo 5981 of 1999

WITH

LETTERS PATENT APPEAL NO. 692 OF 2000

IN

SPECIAL CIVIL APPLICATION NO. 9076 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? YES

2. To be referred to the Reporter or not? YES :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
no

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
no

5. Whether it is to be circulated to the Civil Judge? : NO
no

SATISH MAGANLAL VORA

Versus

UNION OF INDIA

Appearance:

LETTERS PATENT APPEAL NO. 44 OF 2001 :

MR DS CHANDNANI FOR MR BD KARIA for Appellant
MR MR SHAH Addl. Standing Central Govt. Counsel
MR UA TRIVEDI, AGP for Respondent No. 2 & 3

LETTERS PATENT APPEAL NO. 692 OF 2000

MR DS CHANDNANI FOR MR BD KARIA for Appellant
MR MR SHAH Addl. Standing Central Govt. Counsel
MR UA TRIVEDI AGP for respondents No.2, 3 & 4
MR GN SHAH for MS MINOO A SHAH
for respondents No.5, 6, 7 & 8

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE M.C.PATEL

Date of decision: 10/04/2001

ORAL COMMON JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. These two appeals arise out of judgement and order of the learned Single Judge dated 1st April 2000 in Special Civil Application No. 5981 of 1999 with Special Civil Application No. 1365 of 2000 and Special Civil Application No. 9076 of 2000, rejecting these writ petitions. Both the appeals have been argued together fully and finally by both the sides since they involved common questions and are filed by the same appellant, who had filed these petitions.

2. In Special Civil Application No. 5981 of 1999, the appellant had challenged the validity of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractice's) Order, 1998 (hereinafter referred to as `the impugned Order of 1998') and seeking a declaration that the petitioner's product "Patrex" was not covered by the Essential Commodities Act, 1955 (hereinafter referred to as `the Act') and impugned Order of 1998. The appellant also challenged the order dated 3rd June 1999, at Annexure `K' to that petition passed by the District Supply Officer seizing the goods detailed in the order namely, Patrex branded motor fuel, Methanol, Hydrocarbon, Acetone, mixed raw material etc. The appellant also challenged the order dated 25-10-1999, at Annexure `L(1)' to that petition made under section 6-A of the said Act, confirming the order of the District Supply Officer and directing that the seized stock of the petitioner's proprietary concern

M/s Sonar Petrochem valued at Rs.10,80,521=00 be confiscated.

2.1 In Special Civil Application No. 1365 of 2000 which was decided alongwith Special Civil Application No. 5981 of 1999, from which matters the Letters Patent Appeal No. 44 of 2001 has arisen, the appellant while challenging the validity of the impugned Order of 1998 on the ground that it was ultra vires the provisions of the Essential Commodities Act, 1955, also sought for a direction on the respondents to allot to him a monthly quota of 500 M.T. of Naphtha for manufacture of its product `Patrex' as prayed in his letter dated 5-2-2000 at Annexure `M' to that petition. He also claimed damages to the tune of Rs.5,00,000=00 for the alleged mental torture and agony to him by the impugned action of the respondents.

2.2 In Special Civil Application No. 9076 of 2000 from which the Letters Patent Appeal No. 692 of 2000 arises (in the title of which writ petition, the appellant had also mentioned Special Civil Application No. 5981 of 1999, Special Civil Application No. 1365 of 2000 and Special Civil Application No. 1326 of 1998 perhaps because of the overlapping nature of all the petitions, the appellant challenged the seizure order passed by the respondents on 25-2-2000 dated 5-4-2000 and 27-4-2000 at Annexure `K' collectively to that petition and the confiscation order as per Annexure `L' to that petition. A declaration was also sought that the impugned Order of 1998 as well as "Solvent Raffinate and Slop (Acquisition, Sale, Storage and Prevention of Use in Automobiles) Order, 2000 (Annexure `M' to that petition), and again "Naphtha (Acquisitions, Sale, Storage and Prevention of Use in Automobile) Order, 2000 (Annexure `N' to that petition) were all ultra vires the provisions of sections 3 and 7 of the said Act. A direction was sought on the respondents authority to supply to the appellant 5000 Kilo Litres of Naphtha per month for manufacture of his product `Patrex'.

3. The case of the appellant as reflected from his petition (Special Civil Application No. 5981 of 1999) is that he is the Managing Director of M/s Patrex Fuels India Ltd. and a sole proprietor of M/s Sonar Petrochem, and that he had invented a product by mixing Hydrocarbon liquid like Naphtha, Methyl Alcohol and additives (trade secret). According to him, `Patrex' served the purpose of providing motive power to petrol driven vehicles and the same can be used as substitute to normal ordinary petrol sold in open market through petrol pumps.

According to him, his product was tested by Petroleum Conservation Research Association as well as Bharat Petroleum Corporation Ltd. Since the appellant had commercially developed his product `Patrex' throughout India, according to him, it was not feasible for him to go and file writ petitions in each and every State for declaration that his product was not covered by the Essential commodities Act, and that his business should not be obstructed and interfered with and therefore, in May 1997, he approached the Hon'ble Supreme Court by filing Writ Petition No. 202 of 1997 for a declaration that `Patrex' is not covered by the said Act. It is stated in paragraph 10 of that petition that, after hearing his advocate, the Supreme Court was pleased to dismiss the petition by its order dated 5-5-1997. The order of the Supreme Court reads as follows :

> "This writ petition is dismissed. However, the dismissal of the writ petition shall not come in the way of the petitioner to take recourse to such other appropriate remedy as may be available to him in law."

In context of this order, the appellant has in paragraph 10 of his petition stated; "The petitioner says that this order of the Hon'ble Supreme Court clearly confirms the version of the petitioner that Patrex is not covered by the said Act. Obviously, this order came to be passed by Hon'ble Supreme Court in view of provisions of section 2(xi) of the said Act, which vests power with Parliament to include an article in the definition of essential commodity."

3.1 According to the appellant, once again on 30th June 1999, the District Supply Officer, Valsad seized the goods and raw material and other paraphernalia of the appellant at his factory at Sarigam in Umargam Taluka of Valsad under the impugned Order of 1998 with a direction that the seized goods should not be dealt with in any manner whatsoever or any purpose. The respondent No.3 Collector, Valsad proceeded with the matter and made an order on 25th October 1999 confiscating the goods under section 6-A of the Act. In that order dated 25-10-1999, at Annexure `L-1' to that petition, it has been recorded that, on a surprise visit of the District Supply Officer, Valsad on 30th June 1999 to the appellant's factory, it was found that the factory is purchasing and mixing Hydrocarbon, Methanol, Acetone and "XT" and manufacturing a product named `Patrex' which is used as motor fuel. It

was found that inspite of the provisions of clause 3(v) of the impugned Order of 1998, which provided that no person shall sell or agree to sell any petroleum product or its mixture other than Motor Spirit or High Speed Diesel, as specified in Schedule I, in any forms, under any name, brand or nomenclature, which can be and is meant to be used as fuel in Spark Ignition Engines or Compression Ignition Engines, the said factory was manufacturing and selling motor fuels and has violated the provisions of the impugned Order of 1998. A show cause notice dated 20th July 1999 was issued to the appellant who was the sole proprietor calling upon him to show cause as to why the goods and raw material should not be seized in accordance with the provisions of section 6B(1)(a) of the said Act. He was offered a personal hearing on 7th July 1999. The appellant through his advocate informed the authority to treat his reply dated 10th July 1999 as the reply to the show cause notice. A personal hearing was sought and therefore, the matter was fixed on 3rd August 1999. It was again fixed on 21-9-1999 and 12-10-1999. On 2-10-1999, the appellant had stated that he did not have anything more to state than what was already stated by him in his letters dated 10th July 1999 and 20th July 1999. The concerned authority considered in detail the contentions raised in those letters and various litigations that the appellant had preferred in various High Courts as well as the ad-interim order made in Special Civil Application No. 5891 of 1999 on 30-9-1999. It was found that the appellant was purchasing raw material like Hydrocarbon, Methanol and X.T. and after mixing them, he was manufacturing liquid under the brand name of `Patrex' and selling it as motor fuel. It was recorded that it was never stated by him that he was manufacturing `Patrex' in accordance with the Indian Standards specifications and requirements mentioned in Schedule I of the impugned Order of 1998. Since `Patrex' did not meet with the Indian Standards specifications and the requirements laid down in Schedule I, the appellant had violated clauses 2(f), 2(g), 2(v), 3(vii) of the impugned Order of 1998. It was held that the explanation given by the appellant was not satisfactory and acceptable and that the order of the District Supply Officer dated 30th June 1999 seizing the goods was proper and valid and all the seized goods were liable to be confiscated. The seized stock was accordingly confiscated under section 6-A of the said Act. According to the appellant, such an order was not warranted in respect of the petitioner's product `Patrex', because, the impugned Order of 1998 was ultra vires the powers of the Union of India inasmuch as it had the effect of including in the definition of `essential

commodity' given under the said Act, a product which was not included thereunder. Moreover, the impugned Order of 1998 was ultra vires the powers of the respondent No.1 Union of India since it defeated the aims and objects of the said Act and was not made for maintaining or increasing supplies of any essential commodity or for securing its equitable distribution and availability at fair prices. The impugned Order of 1998, according to the appellant, violated his fundamental rights guaranteed by Article 19 of the Constitution since it had the effect of restricting or obstructing his business and the business of his dealers. It also violated the Article 14 of the Constitution by denying the equality to the appellant and his dealers in their trade and business qua other similarly situated persons. It was also the appellant's case that the object underlying the impugned Order of 1998 was only to check malpractices indulged into by dealers of three Oil Companies with regard to the sale and purchase of petroleum products and such provisions cannot apply to the product of the appellant or to the business carried on by the appellant and his dealers in `Patrex'. According to the appellant, in none of the proceedings that he has filed in various High Courts and Special Courts, till today, the respondents were in a position to satisfy any Court of law to show that `Patrex' is covered under the provisions of the Essential Commodities Act or that the impugned Order of 1998 can be applied to `Patrex'.

3.2 In the affidavit in reply filed on behalf of the respondent No.1 - Union of India in Special Civil Application No. 5981 of 1999, reliance has been placed on clause 3(v) of the impugned Order of 1998 for contending that the appellant cannot legitimately sell his product `Patrex' for being used as fuel in the ignition engines. It is stated that the product `Patrex' was predominantly a mixture of Naphtha and Menthol, were liquid Hydrocarbons and hence, the product was covered under the provisions of the said Act. It is also stated that only the Indian Oil Corporation Ltd., Bharat Petroleum Corporation Ltd., Hindustan Petroleum Corporation Ltd. and IBM Company Ltd. were authorised by the Central Government to market motor spirit and high speed diesel oil, and that purchase of such products from sources other than those authorised by the Oil Companies shall be deemed to be `unauthorised purchase', and sale of such products by a dealer was punishable. It is stated that, in reply to questions, the Houses of Parliament were informed that the product `Patrex' was tested by the I.O.C. (R & D Centre) through P.C.R.A. and the tests carried out did not substantiate the claims

made by the party about the product. These answers to the Rajya Sabha and Lok Sabha unstared questions No. 360 and No. 4460 respectively, appear at Annexure `II' and `III' to the said affidavit in reply. In fact, the Petroleum Conservation Research Association had written a letter on October 1, 1991 (Annexure `IV' to the affidavit in reply) in which the appellant was informed that his statement that the product was tested by PCRA as well as IOC (R&D) had surprised them and that it was misleading and unethical. It was stated; "In fact, you have submitted the product for evaluation and the test is still under progress. Hence, in these circumstances, you are not supposed to mention anywhere that the product has been tested by PCR." Bharat Petroleum Corporation Ltd., in reply to a news item, wrote to the Editor on 30-6-1994, as per copy of the letter annexed to the affidavit in reply, that the samples of Patrex were tested by BPCL, but such testing should not be construed as a certificate issued by BPCL for use of Patrex as a substitute for motor spirit. It was stated that certification of a new product as a substitute for an existing one like motor spirit is a very elaborate process involving extensive tests and trials and can be undertaken only by organizations like the Petroleum Conservation Research Association or the Indian Institute of Petroleum. The Indian Institute of Petroleum wrote a letter dated 10th June 1991, as per Annexure `IX' to the affidavit in reply, stating that the Institute was at no stage involved with `Patrex' claim of M/s Sesa Marketing Services and hence, their reference in the pamphlet was seriously objectionable. According to the respondent no.1, the petitioner had mislead the public by giving advertisements in the pamphlets that appellant's product was tested and approved by the IIP, IOC (R&D) and PCRA, Ministry of Defence. It is further pointed out in paragraph 10 of the affidavit in reply that, as per the letter written by the appellant, a copy of which is at Annexure `X' to the affidavit in reply, the appellant himself had admitted that `Patrex' was a motor spirit. In the said letter dated 19-4-1991, the appellant had written to the Deputy Secretary, Department of Petroleum, New Delhi stating that he had developed an alternative motor spirit `Patrex', which he described as "a well tested motor fuel to replace petrol, for internal combustion spark ignited petrol engine vehicles, meeting requirements of Indian Standard IS : 2796 for motor gasoline". It was further stated; "As defined under The Bombay Sales of Motor Spirit Taxation Act, 1958, `Patrex' is a motor spirit, declared as an Essential Commodity under the Essential Commodities Act, 1955 Act No.10 of 1995, and classified as class `A' petroleum product under

the Petroleum Act, 1934 and the Petroleum Rules, 1976". It was stated that the appellant would be willing to comply with any of the formalities or objections to be met with as per the Departmental Rules for manufacturing and marketing the said product `Patrex'. It is further stated that, on 18-9-1997, the respondent No.1 rejected the appellant's application for grant of Naphtha, warning him that any one dealing in `Patrex' shall be prosecuted under the Motor Spirit and High Speed Diesel (Prevention of Malpractices in Supply and Distribution) Order, 1990. The Order of 1990 was repealed by the impugned Order of 1998 in which it was provided in clause 3(v) that, no person shall sell or agree to sell any petroleum product or its mixture other than Motor Spirit or High Speed Diesel, as specified in Schedule I, in any forms, under any name, brand or nomenclature, which can be and is meant to be used as fuel in Spark Ignition Engines or Compression Ignition Engines. It is stated that the product of the appellant is a petroleum product and is directly within the purview of the said Act. As per the expert comments of Adviser (Refinery), Ministry of Petroleum & Natural Gas, it was concluded that the claim of the petitioner that Patrex was neither petrol nor petroleum product is not correct. As stated in paragraph 13 of the affidavit in reply, it has been contended that `Patrex' is hydrocarbon and it is basically Naphtha based, and that the contention of the appellant that this product is neither petrol nor petroleum product nor a liquid hydrocarbon nor a mixture of hydrocarbons, is not correct. The predominant constituents of `Patrex' is Naphtha and Methanol, which are hydrocarbons. It is stated that the petitioner had very cleverly claimed in various advertisements that the product was tested by PCRA / IOC without giving the findings of the test results. In fact, PCRA was forced to bring it to the attention of petrol vehicles owners that the product does not meet with the required specifications and is not suitable for use in petrol powered vehicles. A copy of such announcement is at Annexure `XII' to the affidavit in reply. It is stated that petrol, besides aviation turbine fuel, is a controlled petroleum product and these are covered under the Administered Pricing Mechanism and are over priced to provide subsidy for kerosene supplied to the economically weaker sections of the society under the Public Distribution System as well as domestic LPG sold by Public Sector Oil Companies. It is stated that, if the appellant's product is permitted to be sold, apart from violation of law, supply of kerosene to economically weaker sections of the society and supply of LPG, a cleaner fuel, at subsidized rates to the general public, will also be adversely affected.

3.3 In the affidavit in reply in Special Civil Application No. 5981 of 1999 filed on behalf of the State Government, the Under Secretary to the Food & Civil Supplies Department has contested the petition supporting the seizure and confiscation orders and the impugned Order of 1998. It is further contended that the activities of the appellant are in violation of the provision of section 52 of the Motor Vehicles Act, 1988. It is stated that the seizure order was issued under clause 4 A (iv) of the impugned Order of 1998, since the appellant had violated clauses 2(f), 2(g), 3(v) and 3(vii) of the impugned Order of 1998.

4. In Special Civil Application No. 1365 of 2000, the appellant raised a similar contention stating that his product `Patrex' was not covered by the provisions of the said Act. It was stated that his applications dated 25-2-1997, 9-3-1997 and 21-7-1997 for monthly quota of 200 M.Ts. of Naphtha made to the Union of India were turned down on the ground that `Patrex' did not meet with Indian Standards : IS 2796 and that the Oil Companies or their authorised agent alone could deal in motor spirit. The appellant not being authorised agent of the Oil Companies cannot deal in `Patrex'. The petition raised contentions similar to those raised in Special Civil Application No. 5981 of 1999 with emphasis on the aspect that he should be given quota of Naphtha for manufacturing his product `Patrex'. At Annexure `A' collectively to that petition, the appellant annexed copies of various licences. The appellant's concern was registered with the excise authorities and the description of the excisable goods in the registration certificate was, " `Patrex' Tropical Motor Fuels" and the purpose for which the concern was registered was described as, "Blending & Manufacturing". In Form XIV, at Annexure `A' collectively to that petition, the licence which was to remain in force till 31st December 1996 shows that the appellant was licensed to store petroleum as stated in the Schedule which reads, "Petroleum Class `A' ..... 20,000 liters and Petroleum Class `B' ..... 5,000 liters". Thus, the excise registration and the licence obtained by the appellant shows that his product `Patrex' was even according to him a petroleum product, for which he obtained a licence for storage. Again, the No objection Certificate at Annexure `A' collectively issued by the Additional District Registrar, Valsad to the appellant for storage was also for petroleum class `A' products namely, Methanol, Naphtha, Tolvene as mentioned therein. The certificate of registration as per the Central Sales Tax

(Registration and Turnover) Rules, 1957, a copy of which is also at Annexure `A' collectively shows that the certificate was obtained by M/s Patrex Fuels India Ltd., of which the appellant is the Managing Director for re-sale of petroleum products and chemicals. The appellant also obtained a registration certificate in his name on 30-7-1998 from the Sales Tax Officer for the class of goods described as `petroleum products and chemicals'.

5. In Special Civil Application No. 9076 of 2000, over and above raising the contentions similar to those raised in the other petitions, the only additional emphasis was of raising challenge against the Solvent Raffinate and Slop (Acquisition, Sale, Storage & Prevention of Use in Automobiles) Order of 2000 (hereinafter referred to as `the impugned Solvent Order of 2000') and the Naphtha (Acquisition, Sale, Storage & Prevention of Use in Automobiles) Order of 2000 (hereinafter referred to as `the Naphtha Order of 2000').

6. The learned Single Judge, in the impugned judgement and order dated 1-9-2000 given in Special Civil Application No. 5981 of 1999 and Special Civil Application No. 1365 of 2000, after considering all the relevant aspects of the matter, held that there was no illegality in the seizure and confiscation orders issued by the competent authority which were according to the provisions of the said Act and the impugned Order of 1998. It was held that the ban as provided in sub-clauses (iv) and (v) of clause 3 of the impugned Order of 1998 was in the interest of general public, because, it ensured equitable distribution of the essential commodity. It was held that section 3 of the Essential Commodities Act clothes the Central Government with powers to control production, supply, distribution etc. of essential commodities and the impugned Order of 1998 was issued in lawful exercise of the powers of the Central Government under the said Act. The learned Single Judge negatived the challenge against the sub-clauses (iv) and (v) of clause 3 of the impugned Order of 1998, incorporating by reference the reasons that were given by him in detail for holding that Patrex was a petroleum product in the other judgement delivered on the same day in Special Civil Application No. 9076 of 2000. In His Lordship's judgement dated 1st September 2000 in Special Civil Application No. 9076 of 2000, the learned Single Judge held that, looking to the definition of the word `petroleum' contained in section 2(a) of the Petroleum Act, 1934, it cannot be said by any stretch of imagination that `Patrex' was not covered under the term

`petroleum'.

7. The learned counsel appearing for the appellant in these two appeals contended before us that neither entry No. 33 of the Concurrent List (relating to trade and commerce in, and the production, supply and distribution of the items mentioned therein), nor the Essential Commodities Act empowers the Central Government to ban or prohibit any product on the ground that it does not meet with any standards laid down by any government or authority. He contended that the impugned Order of 1998 purports to punish the malpractices which were not envisaged in entry No. 33 of the Concurrent List or section 3(2) of the said Act. He further argued that clause 3(v) of the impugned Order of 1998, was ultra vires, because, prohibition of any product was not contemplated and that the order was therefore beyond the scope of section 3(1) of the said Act. According to him, clause 3(v) of the impugned Order of 1998 seeks to safeguard or to have a check on the dealings of motor spirit and high speed diesel to ensure prevention of malpractice in supply and transportation and purity of the product from the supply point to the receiver's point. He submitted that this clause will apply only when "motor spirit" or "high speed diesel" of the standard quality was adulterated by any other petroleum product or mixture thereof. He submitted that this clause cannot apply to any new product which was not a motor spirit. The learned counsel argued that the product of the appellant `Patrex' was an invention of high order and since it was an invented product, it could not be covered under the head `petroleum product'. He submitted that the said product was not a motor spirit or high speed diesel which were required to be of the standards specified as required by Schedule I to the impugned Order of 1998. The product of the appellant, according to him, cannot be called petroleum or a petroleum product, because, it was not straightaway made from crude oil. Moreover, according to him, since it contained alcohol alongwith hydrocarbons and some secret additives were added with a view to homogenize them and to raise the octane, the product acquired a different identity than the known petroleum products. Illustrating his contention, the learned counsel contended that Naphtha, a hydrocarbon was derived from crude oil while alcohol was not, and their mixture was a different product which was not straightaway derived from crude oil i.e. petroleum. He also argued that the Indian Standards specifications cannot be applied to a newly invented product like this and even if the product did not match the required Indian Standards, it will not cease to be an invention and since it was an invention of

a different product, there was no question of any malpractice involved in respect of "motor spirit" or "high speed diesel" which were required to be of the standards as laid down in Schedule I to the impugned Order of 1998. The learned counsel also argued that the Essential Commodities Act was enacted for preventing blackmarketing and hoarding. He submitted that the impugned Order of 1998 had the effect of monopolizing the trade and dealing in fuels used for ignition engines in the hands of the Oil Companies and its agents only and such a course was not contemplated by section 3 of the said Act. He submitted that clause 3, 4 and 5 of the impugned Order 1998, therefore, violate the fundamental rights of the appellant and his dealers guaranteed by Article 14 and Article 19(1)(g) of the Constitution and were not saved by Article 19(6), because, the restrictions imposed were unreasonable.

7.1 The learned counsel for the appellant relied on the following decisions in support of his contentions :

[a] The decision in M/s Laxmi Khandsari v. State of U.P. reported in AIR 1981 SC 873 was cited for the proposition that the onus is on the State to justify that the restraints / restrictions imposed on the fundamental rights under clauses 2 to 6 of Article 19 are reasonable. It was held that, as to what are reasonable restrictions would naturally depend on the nature and circumstances of the case, the character of the statute, the object which it seeks to serve, the existing circumstances, the extent of the evil sought to be remedied as also the nature of restraint or restriction placed on the rights of the citizen.

[b] The decision in K. Ramanathan v. State of Tamil Nadu, reported in AIR 1985 SC 660 was cited to point out that, it was held that the predominant object of the said Act as reflected in the preamble was to provide, in the interest of general public, for the control of production, supply and distribution of and trade and commerce in certain essential commodities, and that it was a piece of socio-economic legislation enacted in the national interest to secure control over the production, supply and distribution of trade and commerce in essential commodities. In the same decision, the Supreme Court held that the word

`regulation' cannot have any rigid or inflexible meaning as to exclude `prohibition'.

[c] The decision in V. Sudeer v. Bar Council of India, reported in AIR 1999 SC 1167 was cited for the proposition that any rule framed by the rule-making authority against its statutory functions must necessarily be held to be ultra vires and inoperative at law.

8. The learned counsel appearing for the respondents submitted that the impugned Order of 1998 was issued in consonance with the provisions of the said Act inasmuch as it regulated supply and distribution of the essential commodities namely, `motor spirit' and `high speed diesel' of the required standards which could be effectively achieved only by guarding against supply and distribution of any petroleum products or mixtures thereof for being used as fuel for the purpose of ignition engines in place of these petroleum products namely, motor spirit and high speed diesel of the required standards. It was argued that the appellant was shifting his stand from time to time. He had, when he tried to get clearance from the Petroleum Ministry, posed that his product was a motor spirit of the required Indian Standards specification, however, later on, a story has been developed that he has made an invention. It was submitted that, under the guise of invention, the appellant cannot be authorised to commit breach of the provisions of the impugned Order of 1998 and the said Act. The learned counsel for the respondents supported the action of the concerned authorities of seizure and confiscation, and the validity of the impugned Orders as well as the decisions of the learned Single Judge.

8.1 The learned counsel for the respondents relied upon the following decisions in support of their contentions :

[a] The decision in The Hamdard Dawakhana v. The Union of India, reported in AIR 1965 SC 1167 was cited for the proposition that section 3(1) of the said Act authorises the Central Government to regulate quantitative as well as qualitative aspects of the essential commodity. In paragraph 17 of the judgement, it was observed that the provisions of the Fruit Products Order, 1955 which was issued under section 3 of the said Act

were meant to regulate qualitative aspects of the food products covered by it and that, by virtue of section 3(1), the Central Government thought it necessary to require that a particular quality of fruit syrup should be put on the market as fruit syrup and no other. The decision of this Court in Pravinbhai Mangabhai Desai v. The State of Gujarat, reported in 1990 Cr.L.J. 518, which had relied on the decision of the Supreme Court in Hamdard Dawakhana (supra) was also cited.

[b] Reliance was placed on a decision rendered on 1-8-2000 in Special Civil Application No. 5373 of 2000 in which the impugned Order of 1998 was challenged as being beyond the scope and purview of section 3 of the said Act. A Division Bench of this Court held that, petroleum and petroleum products are primary necessities of life, and there being wide disparity between the price of petrol and solvent, a dealer in petroleum products may be tempted to adulterate petrol with solvent with a view to making gain, and such such activity would directly defeat the provisions of the said Act and the impugned Order of 1998. It was held that the impugned Order of 1998 was within the competence of the Central Government.

9. Under section 3 of the said Act, it has been provided that, if the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. Sub-section (2) of section 3 of the said Act is enacted without prejudice to the generality of the powers conferred by sub-section (1), which includes power to regulate and also to prohibit production, supply and distribution of the essential commodity. The legislative competence in respect of the said Act is referable to entry No. 33 of the Current List. Section 2(a) of the Act defines `essential commodity' as any of the classes of commodities enumerated thereunder and at item (viii), it includes `petroleum and petroleum products'. Therefore, by virtue of the powers of the Central Government under section 3,

the Central Government is empowered, by order, to provide for regulating or prohibiting the production, supply and distribution of petroleum and petroleum products and trade and commerce therein under sub-section (1) of section 3, and to provide in such order for, regulating its production or manufacture by licences, permits or otherwise, controlling the price at which it may be bought or sold or for other matters covered by sub-section (2) of section 3.

9.1 The impugned Order of 1998 has been issued by the Central Government under section 3 of the said Act. It defines `motor spirit' in clause 2(f) so as to mean any hydrocarbon oil (excluding crude mineral oil) which meets the requirements of Bureau of Indian Standards specification No. IS-2796 and is suitable for use as fuel in Spark Ignition Engines. The word `high speed diesel' is defined by clause 2(d) so as to mean any hydrocarbon oil (excluding mineral colza oil and turpentine substitute) which meets the requirements of Bureau of Indian Standards specification No. IS-1460 and is suitable for use as fuel in Compression Ignition Engines. The word "petroleum" as per clause 2(h) shall have the same meaning as is assigned to it in the Petroleum Act, 1934. The word `malpractice' has inclusive definition in clause 2(e) which, inter alia, includes acts of omission and commission in respect of motor spirit and high speed diesel, such as unauthorised possession at item (vii). `Unauthorised possession' is defined in sub-clause (p) so as to mean, keeping of `motor spirit' or `high speed diesel', in contravention of the provisions of this order, or keeping any petroleum product or its mixture, which can be used for adulteration, under the control of the dealer or any other person without valid sales documents issued by the concerned Oil Company. Thus, keeping any petroleum product or its mixtures which can be used for adulteration by any person may also amount to "unauthorised possession" and therefore, a "malpractice" as defined under sub-section (e) of clause (2) of the impugned Order of 1998. `Sale of off-specification product' is also defined in sub-clause (r) of clause 2 so as to mean, sale of motor spirit or high speed diesel by dealer of quality not conforming to Bureau of Indian Standards specifications, No. IS-2796 an IS-1460 for motor spirit or high speed diesel or also not in conformity with Schedule-I. This means even where a dealer of motor spirit and high speed diesel sells such product which does not satisfy the specifications of IS-2796 or IS-1460, as the case may be, he will be committing malpractices and he cannot take up a

contention that since the product was not as per the Indian Standards Specifications, the definition of malpractice would not apply to him in respect of such products.

9.2 The provisions of clause 3(iv) and (v) which has come up for our consideration read as under :

3. Product Supply and Transportation :

(i) *****

(ii) *****

(iii) *****

(iv) No person other than the Dealer or Oil Company or their agent shall be engaged in the business of selling Product from underground storage tank.

(v) No person shall sell or agree to sell any petroleum product or its mixture other than Motor Spirit or High Speed Diesel, as specified in Schedule I, in any form, under any name, brand or nomenclature, which can be and is meant to be used as fuel in Spark Ignition Engines or Compression Ignition Engines.

9.3 Clause 4(iv) of the Order empowers the concerned officer to take samples or seize the stock of the product which he has reason to believe has been or is being or is about to be used in contravention of the Order.

9.4 The contention raised on behalf of the appellant, apart from challenge against the validity of the impugned Order of 1998 on the ground that the Central Government has no power to make such order, is that sub-clause (v) of clause 3 will not be applicable to the product of the appellant which is `Patrex' since it is a product invented by him and not a petroleum product derived straight from crude oil. The challenge against sub-clause (iv) of clause 3 is on the ground that it creates a monopoly in favour of the Oil Companies in respect of petroleum products and thereby, discriminates against the petitioner and violates his right to do business thereby contravening the provisions of Articles 14 and 19(1)(g) of the Constitution.

10. The Naphtha (Acquisition, Sale, Storage and Prevention of use in Automobile) Order, 2000, which was published on 5th June 2000 defines `Naphtha' as a light hydrocarbon liquid with 90% volume distillation, by ASTM D-86 distillation method, of 190 degrees Centigrade or less. Clause 3 imposes restriction on sale and use of Naphtha and, inter alia, provides that no person shall either acquire, store and / or sell Naphtha, without a licence, issued by the State Government or District Magistrate or any other Officer authorised by the Central or State Governments; and no person shall either use or help in any manner the use of Naphtha except Motor Spirit, High Speed Diesel and / or any other fuel permitted by the Central Government, in any automobile. It also provided that, no person shall either adulterate or help in any manner adulterating of Motor Spirit and High Speed Diesel with Naphtha. Clause 4 provides for powers of search and seizure.

10.1 The Central Government has also issued under section 3 of the said Act on 5th June 2000 The Solvent, Raffinate and Slop (Acquisition, Sale, Storage and Prevention of use in Automobiles) Order, 2000. This Solvent Order of 2000 imposes restriction on sale and use of solvent, raffinate, slop and other products.

11. Entry No. 53 of the Union List empowers the Parliament to make law with respect to `Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable".

11.1 The Petroleum Act, 1934 is the existing law which would be referable to the said entry 53 of the union list after coming into force of the Constitution. The word `petroleum', the definition of which is incorporated by reference in the impugned Order of 1998 has been defined in section 2(a) of the Petroleum Act, 1934 so as to mean, any liquid hydrocarbon or mixture of hydrocarbons, and, any inflammable mixture (liquid, viscous or solid) containing any liquid hydrocarbon. Section 5 of the Petroleum Act, 1934 provides that no one shall produce, refine or blend petroleum save in accordance with the rules made under sub-section 2, which, inter alia, may be for prescribing the conditions subject to which petroleum may be produced, refined or blended. Chapter (viii) of the Petroleum Rules, 1976 provides for refining and blending of petroleum. Rule 163(1) provides that, no person shall refine, crack, reform or blend petroleum unless the project report with specifications and plans

showing the general arrangements of tanks, stills, furnaces, electric installation, pump-houses, arrangement for drainage treatment and disposal of effluents, arrangement for fighting fire, fencing gates and all plants and buildings at the place where it is proposed to refine, crack, reform or blend petroleum (hereinafter in this chapter referred to as the refinery) has been approved by the Chief Controller by explosive. Rule 198-A of these Rules provides for power to enter, inspect, search and seize and authorises any officer specified in the table, which includes all District Magistrates, all Magistrates subordinate to the District Magistrates and Police officers not below the rank of Inspector, to seize, detain and remove any petroleum or any material suspected to be petroleum or any equipment or appliances used therein, as provided by clause (d) of Rule 198-A of this Rules.

11.2 Under section 30 of the Petroleum Act, before that section was deleted by the Inflammation Substances Act, 1952, there was a provision made for applying the Petroleum Act to other substances. The Inflammation Substances Act, 1952 which is also relatable to entry No. 53 of the Union List was an Act to declare certain substances to be dangerously inflammable and to provide for the regulation for their transportation, storage and production by applying thereto the Petroleum Act, 1934 and the rules made thereunder and for certain matters connected with such regulation. The liquid and other substances which are declared to be dangerously inflammable are mentioned in section 3 thereof and they include ethyl alchohol, methyl alcohol, and wood Naphtha.

11.3 Before the Mines & Minerals Regulation & Development Act, 1957 was enacted, both the matters relating to petroleum and other minerals in entries No. 53 and 54 of the Union List were dealt with under the Mines & Minerals (Regulations & Development) Act, 1948. The Mines & Minerals Act, 1957 was enacted keeping in view the differentiation made between the petroleum and other minerals in entries No. 53 and 54. By section 32 of the Mines & Minerals Act, 1957, the Mines & Minerals (Regulation & Development) Act, 1948 was amended in the manner specified in the Third Schedule to that Act and as per the Third Schedule, the title of the Mines & Minerals (Regulation & Development) Act, 1948 was changed into the Oilfields (Regulation and Development) Act, 1948 and consequently, amendments were made in sections 1, 3, 5 and 6 of that Act and section 2 thereof was omitted. After this was done, the earlier Mines & Minerals (Regulation & Development) Act, 1948 which was

rechristened after its amendment as "Oilfields (Regulation & Development) Act, 1948" applied to petroleum which is referable to entry No. 53 of the Union List, Section 3(c) of the Oilfields (Regulation & Development) Act, 1948, defines "mineral oils" so as to include natural gas and petroleum. Section 4 provided that no mining lease shall be provided after the commencement of that Act otherwise in accordance with the Rules made thereunder. Section 5 of the Oilfields (Regulation & Development) Act, 1948 empowered the Central Government to make rules for regulating the grant of mining leases or for prohibiting grant of such leases in respect of any `mineral oil' or in any area. Section 6 empowers the Central Government to make rules for the conservation and development of mineral oils. In exercise of powers by section 5 and 6 of the Oilfields (Regulation & Development) Act 1948 and in supersession of the Petroleum Concession Rules, 1949, the Central Government has made the Petroleum and Natural Gas Rules, 1959. Under Rule 3(k) of these Rules, `petroleum' is defined as under :

"3(k) `petroleum' means naturally occurring hydrocarbons in a free state, whether in the form of natural gas or in a liquid viscous or solid form, but does not include helium occurring in association with petroleum or coal, or shale, or any substance which may be extracted from coal, shale, or other rock by the application of heat or by a chemical process."

The words `petroleum product' are defined in clause (n) of Rule 3 of the Petroleum & Natural Gas Rules, as follows :

"3(n) `petroleum product' means any commodity made from petroleum or natural gas and shall include refined crude oil, processed crude petroleum, residuum from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil residuum casinghead gasoline natural gas gasoline, naphtha, distillate, gasoline, kerosene, waste oil, blended gasoline, lubricating oil, blends or mixture of oil with one or more liquid products or by products derived from oil or gas, and blends or mixtures of two or more liquids products or by-products derived from oil condensate gas or petroleum

hydrocarbons, whether herein enumerated or not."

As per Rule 5 of the Petroleum & Natural Gas Rules 1959, a licence or lease in respect of any land or minerals underlying ocean within the territorial water or continental shelf of India and vested in the Union shall be granted by the Central Government and in respect of any land vested in the State Government shall be granted by the State Government.

12. The fundamental right guaranteed under Article 19(1)(g) of the Constitution to the citizens to practice any profession and carry on any occupation, trade or business does not prevent the State from making any law relating to the carrying on by the State, or by a Corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise as provided under Article 19(6)(ii) of the Constitution. This precludes the Court from questioning the reasonableness of a law which creates a monopoly in favour of the State itself or of a Corporation owned or controlled by the State, to carry on any trade to the exclusion of the citizens. Production and distribution of petroleum products are the exclusive monopoly of the State under Article 19(6)(ii) of the Constitution, as held by the Supreme court in Mahinder Kumar Gupta v. Union of India, reported in (1995) 1 SCC 85.

13. Land includes not only its surface but also the mines and minerals under it. Under section 69 of the Bombay Land Revenue Code, 1879, the right of the government to mines and mineral products in all land is declared to be expressly reserved. Section 69-A of the Bombay Land Revenue Code which was inserted in the Code w.e.f. 1st May 1960 by the Gujarat Act No.8 of 1982 (which has been put in the 9th Schedule at Serial No. 219), provides that all mines whether worked or not and minerals whether discovered or not and all quarries within the limits of any land shall vest with all rights over the same in the State Government as provided therein subject to the provisions of the Mines & Minerals (Regulation & Development) Act, 1957. The State Government shall have all powers necessary for the proper enjoyment and disposal of such rights. The mines and minerals and quarries are material resources of the community amenable to public use or for distribution. In Jilubhai Nanbhai Khachar v. State of Gujarat, reported in 1995 Supp. (1) 596 [AIR 1995 SC 142], the Supreme court held that the amended section 69 and 69-A(1) of the Code determined the existing rights and reserved them in

favour of the State and all mines, minerals or quarries situated in any land whether alienated or unalienated held by any person, are governed by section 69 and 69-A of the Code. All things of value within the territorial waters or any continental shelf or the exclusive economic zone, vest in the Union of India as provided by Article 297 of the Constitution. Any rights claimed in respect of these mineral products have therefore to be viewed in context of the fact that all the minerals vest in the Union of India or the State Governments and the production and distribution of petroleum and petroleum products is a matter which is governed by the laws enacted under entry No. 53 of the Union List, which gives the Parliament exclusive power to make laws with respect to regulation and development of oilfields and mineral oil resources, petroleum and petroleum products other liquids and substances declared by Parliament and by law to be dangerously inflammable.

14. Petroleum (literally `rock oil' from the Latin petra i.e. `rock' or `stone', and oleum i.e. `oil') is a complex mixture of hydrocarbons that occur in the earth in liquid, gaseous or solid forms. The liquid and gaseous phases of petroleum constitute the most important of the primary fossil fuels. It was discovered in the 19th Century that rock oil would yield a distilled product kerosene suitable for lanterns, and the advent and the growth of automobile usage in the second decade of the 20th Century created a great demand for petroleum products. Petroleum may exist in gaseous, liquid or near solid phases either alone or in combination. The liquid phase is commonly known as crude oil, while the more solid phase may be called bitumen, tar, pitch or asphalt. Crude oils can be grouped into following three basic mineral series; (1) paraffins (this series of hydrocarbons, also called methane series, comprises the most common hydrocarbons in crude oil); (2) Nepthene (this series is an important part of all liquid refinery products and also forms residue of refinery process -asphalt and alphalt based crudes); (3) Aromatic (the most common member of this series is benzene present in all crude oils). As a series, aromatics generally constitute only a small percentage of most crudes.

14.1 The two elements, carbon and hydrocarbon form the large variety of complex molecular structures and almost all crude oil ranges from 82 to 87 per cent carbon by weight and 12 to 15 per cent hydrogen. The more viscous bituments vary from 80 to 85 per cent carbon and from 8 to 11 per cent hydrogen.

14.2 The production aspect of petroleum is a matter more intimately connected with the Oilfields (Regulation & Development) Act, 1948 and the Petroleum & Natural Gas Rules, 1959, regulating the grant of exploration licences and mining leases in respect of petroleum and natural gas which belong to government and for conservation and development thereof.

14.3 Then remains the refining and blending aspect of petroleum for which, as noted above, provisions are made in Chapter VIII of the Petroleum Rules, 1976, in context of the provision of section 5 of the Petroleum Act, which provided that, no person shall produce, refine or blend petroleum save in accordance with the rules made under sub-section (2) thereof. From the definition of `petroleum' in section 2(a) of the Petroleum Act, it is clear that if any inflammable mixture contains any liquid hydrocarbon, it will be petroleum.

15. The words `petroleum and petroleum products' at item (viii) of section 2(a) of the said Act are not defined in that Act, but they are to be understood in the context of the laws made by the Parliament in respect of `petroleum and petroleum products' which expression is used in entry No. 53 of the Union List. Thus, petroleum as defined in the Petroleum Act, which definition is incorporated by reference made in the impugned Order of 1998, would mean any liquid hydrocarbon or mixture of hydrocarbons, and any inflammable mixture (liquid, viscous or solid) containing any liquid hydrocarbon. This means, whatever components of the inflammable mixture may be, but if it also contains any liquid hydrocarbon, it will fall within the definition of `petroleum'. Thus, the contention that when alcohol which according to the appellant is not a hydrocarbon, is mixed with hydrocarbons and his secret additives, the product of the appellant will not be petroleum as defined, is erroneous in context of the statutory definition of `petroleum'. To say that the so called `invented' product `Patrex' is not petroleum while admitting that it contains hydrocarbon liquid and alcohol (which is declared as dangerously inflammable substance under section 30 of the Petroleum Act, 1934 and under section 3 of the Inflammable Substances Act, 1952), is nothing short of dodging the statutory meaning of the word `petroleum'.

16. The purpose underlying the impugned Order of 1998 appears to be two fold; firstly, it is intended to ensure that motor spirit and high speed diesel that are supplied or distributed meet with the requirements and

specifications indicated in Schedule I and are of the Indian Standards Specifications. The motor spirit has to be suitable for use as fuel in spark ignition engines and must meet the I.S. Specification No. IS-2796, while the high speed diesel should meet with I.S. Specification No.IS-1460 and be suitable for use as fuel in compression ignition engines. To make this requirement more effective and to protect the consumers, the impugned Order of 1998 simultaneously prohibits any one from selling or agreeing to sell any petroleum product or its mixture (other than the motor spirit and high speed diesel of the standards specified in Schedule I), which is meant to be used as fuel in the said ignition engines. The appellant wants the court's aid precisely to do what the law has prohibited in the interest of general public which is targeted for supply of such fuel. There will be no point in requiring the motor spirit and high speed diesel to be of standards specified for being sold as fuel in spark ignition engines and compression ignition engines respectively, if any commodity which is fuel not satisfying those standards though made from petroleum, is allowed to be sold under the guise of invention.

17. The attempted combination of the word `petroleum' as defined in clause (h) and the word `product' as defined in clause (j) for reading the words `petroleum product' in sub-clause (v) of clause 3 of the impugned Order of 1998 on behalf of the appellant was simply an exercise in desperation. The word `product' as defined in clause 2(j) is used for denoting only `motor spirit' and `high speed diesel' as defined in sub-clauses (f) and (d) of clause 2. Reading the word `product' in sub-clause (v) of clause 3 out of its context, it was contended by the learned counsel that only when motor spirit or high speed diesel were adulterated with any other petroleum product, sub-clause (v) of clause 3 would get attracted so as to prevent adulterated motor spirit or high speed diesel from being sold and that such interpretation alone should be given since clause 3, read as a whole emphasised on the purity of motor spirit and high speed diesel from the supply point to the receiver's point. Such interpretation by giving a truncated meaning to the word `product' in the expression `petroleum product' occurring in sub-clause (v) of clause 3 would distort and nullify that provision. The words `petroleum product or its mixture' are used in sub-clause (v) of clause 3 in contradistinction with `motor spirit' or `high speed diesel' of the standards specified in Schedule I, and, are necessarily `petroleum product or its mixture' which can be or are meant for use as fuel in ignition engines, but are not motor spirit or high speed

diesel of the required standards as specified in Schedule I of the impugned Order of 1998. The provision is intended to ensure that nothing short of the requisite quality of motor spirit or high speed diesel as is specified in Schedule I is sold for such ignition engines. There is a complete embargo on any one selling any petroleum product or its mixture, be it `Patrex' of the appellant or under any other name, brand or nomenclature, for use as fuel in spark ignition engines or compression ignition engines. The fuel must necessarily conform to the motor spirit or high speed diesel as defined, which means it should be of the Indian Standards specifications and should satisfy the requirements tabulated in Schedule I for motor gasoline and diesel fuels. Section 3(1) of the Essential Commodities Act (which Act is at entry No. 126 of the Ninth Schedule), inter alia, empowers the Central Government, by order to provide for "regulating or prohibiting the production, supply and distribution" of any essential commodity. The immunity enjoyed by the parent Act cannot proprio vigore be extended to an offspring of the Act like the impugned Order of 1998 and it was open to the appellant to invoke the writ jurisdiction for determining whether the provisions of the impugned Order violate Article 14 or 19(1)(g) of the Constitution. The power conferred on the Central Government by section 3(1) of the said Act is of very wide amplitude. The power to regulate the production of an essential commodity will include the power to regulate the quality or quantity of the essential commodity. The Central Government can direct how certain essential commodities should be produced or supplied and in what quantity. Section 3(1) of the said Act authorises the central government to regulate the qualitative as well as quantitative production of essential commodity as held by the Supreme Court in Hamdard Dawakhana Wakf v. Union of India, reported in AIR 1965 SC 1167. The pith and substance of the relevant provisions of the impugned Order is to regulate the qualitative supply of motor spirit and high speed diesel, and without clause 3(v) which prohibits sale of any petroleum product or its mixture other than of the quality specified for use as fuel in ignition engines, it would not be possible to attain the said objective. This provision shows that the Central Government by virtue of its powers under section 3(1) of the Act thought it necessary to require that a particular quality of petroleum product, namely, motor spirit and high speed diesel which satisfies the requirements laid down in Schedule I should alone be sold as fuel for ignition engines and no other petroleum product or its mixture should be supplied for such

purpose. This object plainly falls within the purview of section 3(1) of the said Act and so, the contention that the impugned Order of 1998 is invalid inasmuch as it purports to tackle petroleum products, other than motor spirit and high speed diesel, that may be invented for use as fuel, cannot be accepted.

18. The learned counsel for the appellant argued that an invented commodity is a new commodity and therefore, the appellant's invention `Patrex' being a new product having an identity of its own, cannot be termed as `petroleum or petroleum product'. The secret additives homogenize the hydrocarbon liquid and alcohol which the appellant uses and raises the octane level. It was stated by his learned counsel that the appellant had even applied for a patent under Patents Act, 1970, but the concerned authority returned his application (which was shown to the court) for want of details of the process. However, since the appellant did not want to disclose his trade secret formally, he did not apply again.

18.1 The word `invention' is defined under section 2(j) of the Patent Act, which means any new and useful (i) art, process, method or manner of manufacture; (ii) machine, apparatus or other article; (iii) substance produced by manufacture, and includes any new and useful improvement of any of them, and an alleged invention. However, as provided by section 3 of the Patents Act, there are certain things which are not inventions within the meaning of the Act. Thus, under section 3 of the Patents Act, an invention the primary or intended use of which would be contrary to law or morality or injurious to public health (clause b); the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant (clause d); a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance (clause f); will not be considered to be inventions. That what is not an invention for the purpose of patents law cannot be consecrated as an invention by the Court. Otherwise, what the law denounces so very specifically by stating that an invention the use of which would be contrary to law, is not an invention, will get anointed by Court process and gain legitimacy. It is not the court's function to legalise what a valid law expressly shuns and thereby to violate it own oath. Thus, any inflammable mixture that contains hydrocarbon meant to be used in spark ignition engines or compression ignition engines

which is not motor spirit or high speed diesel of the specified Indian Standards Specifications and as per the requirements mentioned in Schedule I of the impugned Order of 1998 cannot be sold under the garb of an invented commodity. An invention is a new method, an instrument or device which is created by thought, one for which a patent can be granted. Invention cannot be understood in the sense of concoction of a false story, invented to circumvent the statutory provisions enacted to ensure supply and distribution of fuel of the standards specified in public interest for use in such ignition engines.

19. For the forgoing reasons, the contentions raised on behalf of the appellant against the validity of the impugned Order of 1998 and the other impugned Orders cannot be accepted. The impugned orders of seizure and confiscation have been passed in accordance with the provisions of the impugned Order of 1998 which are in consonance with the provisions of section 3 of the said Act in respect of the essential commodity which falls under the head "petroleum and petroleum products" as enumerated at item (viii) of section 2 of the said Act. The impugned Orders of seizure and confiscation which have been made after giving an adequate opportunity of hearing to the appellant and for cogent reasons warrant no interference by this Court. The appellant can have no right to claim any quota of Naphtha or Solvent which is likely to be used for preparing a product for use as fuel in the ignition engines in contravention of the provisions of the impugned Order of 1998. The entire claim of the appellant appears to have been made for circumventing the prohibitory and regulatory provisions which have been validly made for a proper supply and distribution of an important essential commodity like Motor Spirit and High Speed Diesel, which are petroleum products. We find ourselves in complete agreement with the reasoning and conclusions reached by the learned Single Judge in both the impugned judgements. Both these appears therefore fail and are dismissed with costs.

APRIL 10, 2001 [R.K.ABICHANDANI, J.]

[M.C.PATEL, J.]

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